

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE: ) 19-MD-2875(RBK-JS)  
)  
) Camden, NJ  
VALSARTAN NDMA PRODUCTS ) January 15, 2020  
LIABILITY LITIGATION ) 4:03 p.m.

TRANSCRIPT OF TELEPHONIC DISCOVERY CONFERENCE  
BEFORE THE HONORABLE JOEL SCHNEIDER  
UNITED STATES MAGISTRATE JUDGE

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Colloquy

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1 (The following was heard via telephone conference at  
2 4:03 p.m.)

3 THE COURT: This is Judge Schneider. We're on the  
4 record in the Valsartan MDL, Docket No. 19-2875.

5 Welcome back from the holiday. And let's get the  
6 names of people on the phone, starting with plaintiff.

7 MR. SLATER: Good afternoon, Your Honor. Adam Slater  
8 for plaintiffs.

9 MS. WHITELEY: Good afternoon, Your Honor. This is  
10 Conlee Whiteley on behalf of plaintiffs.

11 MR. STANOCH: David Stanoch for the plaintiffs.

12 MR. WILLIAMSON: This is George Williamson on behalf  
13 of the plaintiffs.

14 MR. PAREKH: This is Behram Parekh on behalf of  
15 plaintiffs.

16 MS. HILTON: This is Layne Hilton on behalf of the  
17 plaintiffs.

18 MR. NIGH: This is Daniel Nigh on behalf of the  
19 plaintiffs.

20 THE COURT: Okay. It sounds like that's the  
21 plaintiff's team. Who's on for the defendants?

22 MR. GOLDBERG: Good afternoon, Your Honor. This is  
23 Seth Goldberg on behalf of the DHP parties, and the defendants.

24 MR. TRISCHLER: Good afternoon, Your Honor. Clem  
25 Trischler for Mylan Pharmaceuticals.

Colloquy

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1 MS. LOCKARD: Victoria Lockard is here for TEVA, and  
2 I believe Brian Rubenstein is on as well for TEVA.

3 MR. RUBENSTEIN: Yes. Good afternoon, Your Honor.  
4 This is Brian on behalf of TEVA.

5 THE COURT: Anyone else?

6 MS. JOHNSON: Good afternoon, Your Honor. This is  
7 Sarah Johnson on behalf of the Pharmacy and Retailer  
8 defendants, including CVS and Rite Aid.

9 THE COURT: Great.

10 MR. GOLDBERG: Your Honor, this is Seth Goldberg.  
11 Because of some of the issues that are on the table today,  
12 there are a few more lawyers on behalf of defendants on the  
13 line. A few representatives of wholesalers.

14 THE COURT: No problem.

15 MR. GOLDBERG: Wholesaler (inaudible) supply chain.  
16 And counsel for Legacy to address the Legacy issue. If you'd  
17 like them to introduce themselves, they're -- they're on the  
18 line as well.

19 THE COURT: Okay. Please -- please do. Let's get  
20 the name of everyone on the line.

21 MR. GOEPPINGER: Good afternoon, Your Honor. Jeff  
22 Goeppinger on behalf of AmeriSourceBergan.

23 MR. ST. ONGE: Britton St. Onge on behalf of Legacy  
24 Pharmaceutical Packaging.

25 THE COURT: Anyone else? Okay.

Colloquy

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1 MR. GOLDBERG: There are folks that, Your Honor --  
2 Your Honor, there are, they probably don't know (inaudible) and  
3 anybody else, you have to hit star one to unmute.

4 MS. NORRIS: Thank you.

5 UNIDENTIFIED COUNSEL: Good afternoon, Your Honor.

6 MS. NORRIS: Thank you for that instruction. This is  
7 Ellie Norris and D'Lesi Davis on behalf of McKesson.

8 THE COURT: Well you might as have opened the  
9 floodgates there, Mr. Goldberg.

10 MR. KAPLAN: Good afternoon, Your Honor. One more.  
11 This is Andrew Kaplan on behalf of Cardinal Health.

12 MR. SELLINGER: Good afternoon, Your Honor. This is  
13 David Sellinger on behalf of Walmart.

14 MR. JANOW: Your Honor, this is Jonathan Janow on  
15 behalf of Albertsons.

16 MR. KNEPPER: Your Honor, Matthew Knepper on behalf  
17 of Express Scripts.

18 MS. HEINZ: And Jessica Heinz on behalf of Aurobindo  
19 USA and Auro.

20 MS. RICHER: Good afternoon, Your Honor. This is  
21 Kristen Richer also on behalf of CVS and Rite Aid.

22 THE COURT: Okay. Let me jump in here before we get  
23 even more names.

24 I received the letters from plaintiff and defendant.  
25 Thank you very much. We'll go down each of those issues and

1 discuss them, and any other issues the parties want to address.  
2 Before we get into the issues in the letter, I just have one  
3 question that perhaps someone can help me with. Like me, you  
4 probably got an order from the Judicial Panel, which had the  
5 caption of the Invokana case and the Valsartan MDL's on it.

6 And I have to confess, I'm terribly confused by what  
7 that order says and what it means as regards our case. If  
8 anyone on the phone knows what I'm talking about, the order,  
9 and have an explanation of that order, what it means, boy, I  
10 would appreciate some explanation.

11 MR. STANOCH: Your Honor, this is David Stanoch for  
12 plaintiffs. Hearing nothing from all the esteemed colleagues.  
13 I looked at this order very briefly, and I believe, and I may  
14 be wrong, but I believe that was a case that was -- that  
15 involved both Invokana and Valsartan. And I believe the JP  
16 have now severed the claims as to Valsartan and Invokana from  
17 one another, and then transferred them accordingly.

18 I could be wrong, but that was my very quick read on  
19 the phone when I'm coming back from a plane -- on a plane from  
20 vacation.

21 MS. RICHER: Yes, Your Honor. This is Kristen  
22 Richer. I can confirm that that's correct. I'm familiar with  
23 that case in another context, and the complaint as originally  
24 filed identifies those (inaudible). And they were severed and  
25 sent to their respective (inaudible).



Colloquy

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1 THE COURT: So that order only concerns one case?

2 MR. STANOCH: Yes. Yes.

3 THE COURT: Well thank you for the clarification.

4 That's helpful. All right. Let's now get to the issues in the  
5 letters, and I think it's perfectly fine to go in the order  
6 that is in the letter. But maybe -- let me take the -- let me  
7 just go out of order for one moment.

8 And let's discuss the Legacy issue, because I think  
9 that's pretty straightforward. You saw my order terminating  
10 without prejudice the Legacy motion. I spoke to Judge Kugler  
11 about this. He confirmed that all motions are stayed. That's  
12 why I entered my order. Legacy, if you're on the phone, if you  
13 want to make a special application to Judge Kugler about why  
14 there's special circumstances, that Legacy is in such a unique  
15 position that it should be permitted to file its motion at this  
16 point, you could -- why don't you file an application with  
17 Judge Kugler.

18 It will be put on the agenda for the conference at  
19 the end of the week, and you could argue it before Judge  
20 Kugler. Your client hasn't been in the case apparently since  
21 the beginning. Judge Kugler made it absolutely clear that  
22 there's going to come a time in this case where he hears the  
23 parties' dispositive motions.

24 But as far as he's concerned, in terms of case  
25 management, that time isn't ripe yet. So that's why the motion

1 was terminated for Legacy, just like any dispositive motion  
2 that's going to be filed. But, again, to repeat, if you think  
3 Legacy is in such a unique position, make an application to  
4 Judge Kugler, it will be put on the agenda for the conference  
5 at the end of the month, and you can argue it in person at that  
6 time.

7 So does Legacy's counsel want to be heard on that?

8 MR. ST. ONGE: No, I -- yes. Thank you, Judge. I  
9 think that makes sense, and I understand that won't be the  
10 actual motion, that's just an application for leave to file the  
11 -- so I guess re-file the motion and have it heard. Should I  
12 make that application -- file that in the MDL and then  
13 cross-file that original action as well?

14 And when would you like that to be filed by?

15 THE COURT: I think that makes sense. I don't think  
16 you have to file a formal motion. You could do it by letter  
17 brief. I would address it to Judge Kugler. If you could copy  
18 me on it, that would be helpful. I'll make sure it gets on the  
19 agenda for the conference at the end of the month.

20 In terms of when you should file it, I would do it as  
21 soon as I can, counsel, so that Judge Kugler has time to  
22 consider it. And anybody that wants to be heard with regard to  
23 that motion can chime in.

24 MR. ST. ONGE: Just one quick second, Judge. This is  
25 Britton for Legacy again. A letter brief, and that would be

1 filed on the Docket, though, correct?

2 THE COURT: Yes. Absolutely.

3 MR. ST. ONGE: And would like me to send you a copy  
4 -- okay. You said a copy I wasn't sure what that meant.

5 THE COURT: Well you're going to mail it to Judge  
6 Kugler. Mail a copy to me also. Between your mailing and the  
7 Docket, I won't miss it.

8 MR. ST. ONGE: Okay. Thank you, Judge. I will do  
9 that.

10 THE COURT: All right. So that takes care of the  
11 Legacy issue. The first issue in the letters is the expansion  
12 of the MDL. Let me -- let me -- I'll open it up for discussion  
13 in a moment. But let me just tell you what I'm thinking about  
14 this. I do agree that the expansion of the MDL raises some  
15 really sticky issues about how to handle it.

16 I told Judge Kugler that I thought it's best that we  
17 not decide any of those issues during this phone call, but will  
18 put it on the agenda for the afternoon conference at the end of  
19 the month when we meet with Judge Kugler.

20 Because I think some of these issues really have big  
21 implications for how this case is going to proceed. That being  
22 said, with the understanding that we're not going to decide  
23 anything on this phone call, I think it would be helpful to  
24 have a discussion about what the issues are, and the different  
25 positions of the parties, so that we can at least be alerted to

1 what's -- what's coming.

2 Plaintiff -- let me start with plaintiff. Mr.  
3 Slater, what are plaintiffs suggesting for how we incorporate  
4 the two new sartans into this case, given that, of course, the  
5 master complaints only concern Valsartan. We've -- the  
6 document requests and the search terms that we've been dealing  
7 with were of course only directed to Valsartan.

8 Have plaintiffs crystalized how they want to approach  
9 this issue?

10 MR. SLATER: Thank you, Judge. I think that starting  
11 with a couple of things that I think are the pressing issues  
12 that we're certainly going to want to address, and I can talk  
13 (inaudible) issues given the time. One thing we need quickly  
14 is a direct filing order. I just want to kind of put that out  
15 there and say to everybody on the phone, get everybody's  
16 attention because people need to file cases and we want people  
17 due to the lack of ability to file them pursuant to victims who  
18 have filed. If we can just tweak it a little to bit Irbesartan  
19 and Losartan cases, so that we don't have people filing cases  
20 all over the country and having them sent over.

21 THE COURT: All right. Let's -- let's deal with --

22 MR. SLATER: This is a priority.

23 THE COURT: All right. Let's deal with just that  
24 issue. Do the defendants have an objection to that? To just  
25 amending, or revising, or supplementing the existing direct

1 filing order to include the two new sartans? Because, if not,  
2 I would just ask you to send me a form order, Mr. Slater, and  
3 if Mr. -- if Judge Kugler's not in the office, I'll sign it.  
4 So is there going to be any objection?

5 MS. LOCKARD: Your Honor, it's Victoria Lockard here  
6 from TEVA. Since we all worked on the initial order for the  
7 direct filing, we can work with Mr. Slater on (inaudible). I  
8 don't think we'll have any objection, but I just want the  
9 opportunity to canvas the rest of the defense group. But --  
10 and, you know, so far we haven't heard any objection to that  
11 and we finally stated in the letter that was provided to the  
12 Court. So --

13 THE COURT: Sounds great.

14 MS. LOCKARD: We can handle it.

15 THE COURT: Okay. Sounds great to me. Mr. Slater?

16 MR. SLATER: That sounds reasonable.

17 THE COURT: Just coordinate with counsel. Send it to  
18 the Court. If Judge Kugler's not in the office at the time,  
19 I'll sign it and get that done. Okay.

20 MR. SLATER: Thank you, Your Honor. And just sort of  
21 on Ms. Lockard's question. I -- you know, if she could send it  
22 over today, our hope is to submit an option by the end of the  
23 week. Because we're getting calls from people asking what to  
24 do. So if she could do that quickly, I'll make sure. All  
25 right.

1           In terms of the overall litigation, Your Honor, I had  
2   a good talk with Jeff the other day, with Mr. Goldberg the  
3   other day, and I think we both were saying that we needed to  
4   talk to our groups to figure out the details, and also get  
5   guidance Your Honor and Judge Kugler about your thoughts.

6           But it certainly seems most efficient to try to use  
7   the claims that have been negotiated and ruled on, to the  
8   extent they have been, as much as possible for Losartan and  
9   Irbesartan, and then figure out if there are any unique issues  
10   that would cause those documents to be changed in any  
11   particular way.

12           And I think everybody should be really thinking about  
13   that and so on -- that -- we think though, we haven't all  
14   talked on our side, but there's certainly a likelihood of new  
15   master pleadings regarding the two drugs, and there may be some  
16   other viewpoint on the plaintiffs' side as to whether or not  
17   they should be folded in together.

18           But I know the early discussion is that we can keep  
19   this as clean as possible, should have master pleadings for  
20   each of the drugs, so that the -- you know, it might -- a good  
21   separation on the master pleading matter. As far as -- as Your  
22   Honor said, we've done so much work on the discovery requests  
23   that we feel that we should start with what we find, and then  
24   we should figure out how those documents should be amended, and  
25   then if that can't be worked out, obviously, bring those

1 specific issues to Your Honor.

2 And then there may be some issues that we're not  
3 aware of. You know, there's some new parties, there may be  
4 some different issues having to do with the sales, and there  
5 may be different issues with having terminology and things like  
6 that. So, obviously, the search terms is a prime example as  
7 Your Honor mentioned. Something that you have to go through  
8 and get them, and especially the ones that are going to be  
9 specifically patents that are involved with the Irbesartan and  
10 Losartan issue.

11 So that's really our 10,000 (inaudible) to it. And  
12 we agree that we can continue to talk on our separate sides,  
13 and then continue to talk between us now and before we get to  
14 court January 28th, so at least we can identify any issue that  
15 might be, you know, primary type issues.

16 The other issue for the plaintiff is that we've  
17 gotten a couple of inquiries from people who now have  
18 Irbesartan or Losartan cases and have asked what we intend to  
19 do with the plaintiff's leadership structure. And we have told  
20 them we thought what made the most sense was to address that  
21 all at once, because there may be that one or two people have  
22 reached out now, but there could be others that over the next  
23 few weeks will file cases and want to be involved.

24 So I thought was to perhaps put something on the  
25 Docket on ECF stating that if people are interested in joining

1 our leadership structure specific to those new drugs, that we  
2 can talk to them and try to come up with what makes sense.  
3 Things like additional PLAINTIFF (phonetic) spots, certainly,  
4 you know, that could probably be a reasonable part of the  
5 discussion and probably the formation of a committee to focus  
6 on how we're going to get up to speed with the new drugs.

7 I think that's a pretty good overview of where we are  
8 on our side, unless anybody wants to add to that.

9 THE COURT: Mr. Goldberg, it would be helpful to have  
10 the 10,000 foot general thoughts if you know them of the  
11 defendants.

12 MR. GOLDBERG: Sir, I can give you some of them. You  
13 know, I think we -- I think we are still trying to get  
14 everyone's input at all levels of the supply chain. And Mr.  
15 Slater's correct, we did have a, you know, productive  
16 conversation. And the parties have agreed to get together next  
17 week to talk about these things.

18 I think as a -- as a general matter, you know, the  
19 three drugs really do have differences in terms of, first, from  
20 a factual standpoint in terms of manufacturing processes, et  
21 cetera, from a regulatory profile. I mean, we see that the  
22 recalls for Valsartan are vastly different than  
23 the recalls for Irbesartan and Losartan. There are different  
24 defendants that manufacture these drugs.

25 Some who manufacture Valsartan don't manufacture



1 Losartan and Irbesartan. So, you know, at a minimum if we  
2 create some proportionality issues when you take Valsartan,  
3 which is the broadest of -- of recalls, and -- and simply try  
4 to transpose Valsartan onto Irbesartan and Losartan. So, you  
5 know, those are things hopefully we can work out with  
6 plaintiffs when they're talking about some of the discovery.

7 Obviously, we've spent a lot of time on specific  
8 language in document requests. Those kind of things, you know,  
9 you don't think you'd want to revisit those kinds of things,  
10 but it's more on some requests it's inapplicable because of the  
11 differences in the drugs in some areas, you know, not worth  
12 going down the road on in terms of Irbesartan and Losartan.

13 I think we are really trying to think through some  
14 more of the -- of the bigger picture issues. Why, you know,  
15 do you put these drugs on different tracks? Now is this -- is  
16 this a time to think about whether, you know, there's a -- the  
17 Court had talked about the economic loss claims. You're maybe  
18 proceeding, or with a personal injury claims, or there -- is  
19 this a time to think about one set of case -- one set of claims  
20 going ahead of the other?

21 You know, if you want to proceed on Valsartan and you  
22 push the other -- the other cases and the other drugs, to use  
23 Mr. Slater's phrase from the other day, to have those lag  
24 behind, you know that may create some efficiencies, but it also  
25 may create some inefficiencies at this point in time in terms

1 of collecting information.

2 These are things that I think we want to, you know,  
3 these higher -- these higher level issues about management we  
4 want to discuss with plaintiffs and do think we'll be able to  
5 come to the Court at the end of the month with some good  
6 suggestions about them.

7 THE COURT: That sounds very logical and sensical  
8 (sic). And I think you agree with me that these issues are so  
9 important and so overreaching that we should give the parties  
10 time to talk them out. We're not going to decide anything  
11 today. And we'll put them on the agenda for the afternoon  
12 conference at the end of the month.

13 But let me just make two general comments, and see if  
14 you agree with them. One is, Mr. Slater, I think your idea  
15 about opening up leadership to have people who are  
16 representative of this Losartan and Irbesartan issue is an  
17 excellent one. I know Judge Kugler would encourage that, and I  
18 think that's a great idea to make sure that leadership  
19 structure of the group is representative of the entire group.

20 But the second general point I would make is, there's  
21 pleading issues we have to deal with, and there's discovery  
22 issues we have to deal with. I think it makes sense to try and  
23 deal with the pleading issues first. Let's get them sorted out  
24 and organized, and then, you know, we can deal with the  
25 discovery issues with regard to these two new sartans after we

1 get the other fact sheets and discovery requests out of the  
2 way, which I hope we can do by the end of the month.

3 And then after we get that out of the way, revisit  
4 the -- the two new sartan issues. So I do think it makes sense  
5 to separate the discussion when you talk about these issues  
6 into case management, pleading issues, and separately deal with  
7 the discovery issues, which I would put on the back burner for  
8 now.

9 Okay.

10 UNIDENTIFIED COUNSEL: Thanks, Judge. We're in lock  
11 step with that.

12 THE COURT: Okay. So we'll -- we'll be prepared to  
13 -- you'll discuss these issues, there's some very important  
14 issues obviously. And we'll discuss them the afternoon at the  
15 end of the month conference.

16 Second issue on the letters is downstream defendant  
17 discovery. According to the chronology that I keep, our  
18 expectation and hope by the conference on the twenty-eighth was  
19 we were going to finalize all defendant fact sheets, and if  
20 there were any issues regarding the non-manufacturing  
21 defendants fact sheets, we were going to address them, brief  
22 them, and decide them by the end of the month.

23 Where are we on the downstream defendant discovery  
24 issues?

25 MS. WHITELEY: Your Honor, this is Conlee Whiteley.

1 I can address the discovery request issues. We've been having  
2 meet and confers. I think we've basically started off towards  
3 the end of December on the 18th with Ms. Johnson, and we had a  
4 follow up call with her.

5 We've made a good bit of progress there. We've  
6 exchanged -- we're all working on the short document, and we've  
7 added a little bit of that, and we explained to her that we  
8 needed to get some terminology confirmed with our expert.  
9 And then turn it back around to her once we agree, or so that  
10 the short form of those, the topics, the terminology. And  
11 we're going to put that back into our formal discovery request.

12 We are on a similar trajectory with the wholesaler  
13 defendants, but just a little bit behind. We had -- Mr. Slater  
14 and Ms. Davis had a call on Christmas Eve to get the process  
15 started. We were going to have another call yesterday, but we  
16 ended up -- we just received our draft from them of requests  
17 for production that they believe that would be appropriate.  
18 We're reviewing those.

19 We also last night reviewed some additional  
20 information from Ms. Davis about scheduling, and other matters  
21 which she wants to talk about in terms of discovery that she  
22 wants from plaintiffs outside of the plaintiff fact sheet, and  
23 scheduling for class certification, motions and other things  
24 like that. So we have asked for a follow up call to discuss  
25 everything in the case. Some of it may not need to be

1 discussed right away, but we'll get everybody caught up and  
2 work though those issues on Friday.

3 MS. JOHNSON: And --

4 THE COURT: Go ahead --

5 MS. JOHNSON: Your Honor, this is Sarah Johnson on  
6 behalf of various retailer and pharmacy defendants. And I go  
7 to what Ms. Whiteley said regarding her efforts. You know, as  
8 you may recall, we had that conference by phone on the  
9 eighteenth and there were some concerns that we were going to  
10 be on a tight time line following the holidays.

11 So what we did we did, efforts collectively from  
12 everybody's (inaudible), we got together and we -- we did a lot  
13 a work over the holidays to go back to our respective entities  
14 and figure out what we thought we could reasonably provide in  
15 keeping with the Court's guidance at that last conference.

16 And as Ms. Whiteley mentioned we prepared a draft of  
17 those requests (inaudible), and then had a follow up conference  
18 about those, and we're waiting for the edit. So we're -- we  
19 are mindful of the Court's --

20 THE COURT: Target.

21 MS. JOHNSON: -- schedule for -- for the -- yeah, for  
22 the target to finalizing these requests and we're continuing to  
23 talk, and next step, we'll see what plaintiffs come back with  
24 on those requests.

25 THE COURT: Okay. So it sounds like with regard to

1 the retailer pharmacy parties we should be in a position to  
2 address any disputes on the twenty-eighth.

3 MS. WHITELEY: Yes, Your Honor.

4 MS. JOHNSON: We're hopeful that that's where we're  
5 going to be, Your Honor.

6 THE COURT: Okay. To give both sides peace of mind,  
7 and I recall a reference in one of the letters to this, I  
8 wholeheartedly agree that this set of requests is without  
9 prejudice to serve another request in the future, or a  
10 supplemental request.

11 This doesn't mean that this is the end of the road  
12 with regard to discovery. So if you're concerned, plaintiffs,  
13 that if you don't get something included now you'll never get  
14 it, that's not the case. If you need something down the line,  
15 you'll get it. If it's relevant in the good cause you'll get  
16 it. So maybe that will help the parties if the -- to focus on,  
17 you know, what they genuinely need at this point, because they  
18 don't have to be concerned that they're waiving anything.

19 Do you think we'll be in a position to also address  
20 the wholesaler defendants document requests by the  
21 twenty-eighth?

22 MS. WHITELEY: Your Honor, this is Conlee Whiteley  
23 again. I believe that we will be. I'm hoping we'll make a  
24 good bit of progress on Friday, and that is certainly our goal.

25 THE COURT: Okay. Great. The third issue, I don't

1 really understand why this is on the agenda. Manufacturer  
2 defendant fact sheets. So what group of defendants are we  
3 talking about here?

4 MR. NIGH: Your Honor, I can address -- this is  
5 Daniel Nigh. The fact sheets go to the specific case where we  
6 just were discussing were the overall set of general discovery.  
7 And so if you'll recall, we're completing individual plaintiff  
8 fact sheets. This is discovery aimed at understanding  
9 defendant's information that they have for individual cases in  
10 response to the fact sheets.

11 So it's the same type of thing we did in Benicar,  
12 where we have plaintiff fact sheets and defendant fact sheets.  
13 That's what we've been working on. We had had a joint fact  
14 sheet where everybody would, you know, our hope was to have  
15 everybody in the supply chain work on it together. But with --  
16 but with Your Honor's guidance we understand that we're  
17 splitting that apart. We have done that to where it's to be  
18 that each person in the chain, and my hope is to have it to  
19 where we can -- we can send out the -- our draft by the end of  
20 the week, so that we can have a discussion then and see  
21 whatever differences that we have and adjust those at the end  
22 of the month.

23 THE COURT: Mr. Nigh, I have to confess, I'm  
24 confused. I -- I don't know when -- we -- I mean all -- most  
25 of the time up until now was on the API manufacturers and the

1 final product people. Who are the plaintiffs referring to when  
2 they talk about manufacturer defendant fact sheets?

3 I -- I don't understand.

4 MR. NIGH: Well it shouldn't just be manufacturers'  
5 fact sheets, it should really be called defense fact sheets.

6 THE COURT: So I --

7 MR. NIGH: That goes to everybody in supply chain.

8 THE COURT: So --

9 UNIDENTIFIED COUNSEL: (Inaudible) one second?

10 THE COURT: Yeah, I don't --

11 UNIDENTIFIED COUNSEL: In order to demonstrate it?  
12 Judge, the way this came up I think we skipped -- leaped over  
13 it. And, Mr. Goldberg can correct me. When we had our call  
14 the other day, he told me he was going to put an issue on the  
15 agenda which would -- to ask the Court to -- to not require  
16 defense fact sheets to be completed by the manufacturers. And,  
17 I assume that means API and Finish Dose manufacturers. So the  
18 way it was presented to me is that those -- that group of  
19 defendants did not want to do a defense fact sheet, despite the  
20 fact that we've always understood them to be done to identify  
21 things that would impact on the case specifically, identifying  
22 lots, batches, whether the batch was contaminated, at what  
23 level, et cetera.

24 Contact with the doctors involved in the care of the  
25 plaintiff, et cetera. Those types of issues. And Mr. Goldberg



1 said they didn't think they should have to do a fact sheet  
2 anymore in light of the general discovery.

3 THE COURT: Oh.

4 UNIDENTIFIED COUNSEL: That's my understanding of why  
5 that was placed on the agenda today. That (inaudible) for  
6 them, not from us.

7 THE COURT: Okay. So we'll hear from Mr. Goldberg  
8 right now. But so I -- I guess what I'm understanding now --  
9 now it's -- now it's clarified a little bit. Is it defendants'  
10 position that since they're responding to the requests for  
11 production that they don't have to also respond to these fact  
12 sheets?

13 MR. GOLDBERG: Yeah, that's part of the position,  
14 Your Honor. And the fact sheet issue started really before the  
15 Court spent, you know, the many months this fall going through  
16 all of the document requests.

17 And that issue got tabled while we worked on the  
18 document requests. Now that we have the Court -- the Court  
19 approved document requests that cover the waterfront with  
20 respect to the kind of information that had previously been  
21 proposed for the defendant fact sheet, we -- we think it's  
22 unnecessary to do. So that's -- that's part of the -- the  
23 mediation hearing. So we just wanted that clarification,  
24 because the -- because we knew January 28th was coming up, and  
25 there was this motion that defendant fact sheets needed to be

1 completed.

2           The second -- you know, the second issue is that the  
3 kind of information that plaintiffs might ask the manufacturer  
4 defendants to provide in a fact sheet, and, namely, it -- it  
5 really seems to be about the identification of a lot or batch  
6 that a specific plaintiff might have -- the drug that a  
7 specific plaintiff might have consumed came from.

8           That information is not in the possession, or not  
9 able to be provided by the manufacturer defendant. And so it  
10 -- it -- that kind of request in a defendant fact sheet is  
11 really unnecessary as to the manufacturer defendant. And so  
12 for those two reasons, we thought it made sense to just have  
13 the clarity that at the manufacturer level of the supply chain,  
14 a defendant fact sheet is not necessary.

15           THE COURT: Is there -- well, I mean, it's clearly  
16 the case, it's unquestionably the case that if there is going  
17 to be a fact sheet for the defendants, it can't duplicate  
18 what's in the request for production. That makes no sense. So  
19 is there a circulating draft of whatever fact sheet the  
20 plaintiffs want the manufacturer defendants to respond to?

21           MR. GOLDBERG: You know, Your Honor, this is -- this  
22 is Seth Goldberg. Again, this -- there have been some drafts  
23 circulated. And the last draft that we provided was back in  
24 October before Your Honor really dug in on the document  
25 requests.

1 THE COURT: Right.

2 MR. GOLDBERG: And at least with respect to the API  
3 and Finish Dose Manufacturers there are really only three or  
4 four areas. There's produce the lot and batch with respect to  
5 a specific plaintiff. Produce the testing with respect to that  
6 lot and batch, and produce communications with the plaintiffs'  
7 physicians. We think you have that.

8 And the first two are certainly covered by the  
9 document request. I'm not sure about physician communications,  
10 I think they are covered by the document request. And so every  
11 one they've asked for is stuff we've already put into the  
12 document request.

13 THE COURT: Mr. Slater, wouldn't it make sense for  
14 the -- now that the Court has ruled on the document requests,  
15 and there can be no legitimate dispute that the fact sheets  
16 shouldn't duplicate what the defendants, the manufacturing  
17 defendants have to answer in the request for production,  
18 wouldn't it make sense to go back to the draft and just clean  
19 it up?

20 And if you think there's anything that's not covered  
21 by the document requests, show it to the -- Mr. Goldberg and  
22 his group, and then if there's disputes, we'll deal with it.  
23 But I don't think it -- it's probably not wise to work from a  
24 draft from October, since so much work has been done since  
25 October that would moot out, according to Mr. Goldberg, all of

1 the proposed fact sheets.

2 MR. SLATER: We agree. And what Mr. Nigh was saying  
3 when he first got on is that what happened was we had served a  
4 integrated defense fact sheet for the defendants to pull out  
5 the parts that apply to them, and then as we got into the  
6 document more or less, it was agreed to just push that issue to  
7 January, because, you know, as you said, we're dealing with  
8 some other issues, let's just take care of that next.

9 As Mr. Nigh says, we agreed fully with what you said.  
10 We broke the fact sheet down and we're finishing them and going  
11 to get them to the defendants by the end of the week.

12 THE COURT: Okay.

13 MR. SLATER: And I think once -- once if you actually  
14 see them, then you'll see --

15 THE COURT: Okay.

16 MR. SLATER: -- that it won't be duplicative. What  
17 it will be is narrowed to the plaintiffs. So that we  
18 originally had put this together with all these levels because  
19 the manufacturers can't alone identify whether a plaintiff took  
20 a contaminated pill.

21 But when we take the information from the retailer  
22 going backwards up the distribution chain from, you know, okay,  
23 they took this NBC (phonetic) code, this is what the coding is  
24 at the wholesale level going back to the manufacturer, then the  
25 manufacturer can say, okay, now we know that James Smith took a

1 pill with these identification numbers. And we go back, we  
2 know that's a contaminated batch, or the contamination level is  
3 this, et cetera, so there's information the manufacturers will  
4 need from these downstream defendants in order to be able to  
5 put it together.

6 So this is going to be a work where we're getting the  
7 information from one level to go to the other level, and  
8 ultimately be able to know on a plaintiff-by-plaintiff level,  
9 for example, in an individual cancer case which code they took,  
10 going back up the chain to the manufacturer for that specific  
11 lot or batch confirmed to be contaminated, et cetera.

12 And then the obvious other issues of, for example,  
13 physicians specific location, specific if they have documents.  
14 So we're on the exact same pages, Your Honor. It's not just a  
15 duplicate document, it's a document to make sure we have the  
16 specific information for a specific plaintiff so that the  
17 specific facts are laid out directly.

18 THE COURT: Okay. So if I understand it right,  
19 plaintiffs are going to serve by Friday a revised proposed fact  
20 sheet. Defendant manufacturers will look at that. I hope  
21 there's no objection, but I live in the real world. And then  
22 with regard to the disputes, we can address them on the  
23 twenty-eighth. Maybe we won't decide them, but we'll at least  
24 address them on the twenty-eighth.

25 But until Mr. Goldberg and his group gets the revised

1 fact sheets, you know, it's pointless I think to talk about the  
2 issue, because we don't know what it is that plaintiffs want.

3 UNIDENTIFIED COUNSEL: We agree on this (inaudible).

4 THE COURT: All right. So, Mr. Goldberg, you'll get  
5 that revised, cleaned up -- my words, my words -- cleaned up  
6 fact sheet by Friday. You'll have time to discuss it and any  
7 disputes, which presumably there will be, we'll discuss it on  
8 the twenty-eighth.

9 MR. GOLDBERG: Sounds fair.

10 THE COURT: All right. That takes us to what's a  
11 really interesting issue the recalled product issue. Just to  
12 put your mind at ease, we're not going to decide this issue  
13 today. There's too much involved, there's too much  
14 consideration. But I'm glad you raised it, because it's a big  
15 issue.

16 It's a big enough issue, it seems to me that it  
17 deserves a motion. But here's the -- here's the concern,  
18 problem, what have you, that I see. Again, I'm not making any  
19 ruling, but the odds that every single recalled pill has to be  
20 preserved, at least commonsense wise, doesn't sound reasonable.

21 So there has to be an identification of some type of  
22 representative group, or sample of recalled pills that are  
23 preserved. But even though we've been trying from the very  
24 beginning in this case to find out the volumes involved, what  
25 is a lot, what is batch, no one has been able to identify that

1       thus far. So, I mean, does anyone have any idea if we're  
2       talking about a thousand pills, a million pills, a hundred  
3       million pills?

4               And doesn't that help frame the issue ultimately  
5       about what has to be preserved, if anything?

6               MS. HILTON: Your Honor, if I may? Layne Hilton on  
7       behalf of the plaintiffs. Just to address Your Honor's first  
8       point about the practicality of the defendants keeping or  
9       preserving recalled pills. They're actually the part of the  
10      FDA recall efforts. They're actually under FDA obligation for  
11      every recalled pill they receive in their possession, they have  
12      to quarantine it.

13              So they're already doing it, they're already keeping  
14      the pills for (inaudible) their obligations under the FDA. And  
15      so all we're asking is that they don't then destroy the pills  
16      because they're already keeping them, they're already  
17      quarantining them. Defendants have indicated that they are  
18      quarantining and keeping pursuant to a litigation hold.

19              THE COURT: Right.

20              MS. HILTON: Defendant Mylan has indicated that they  
21      are quarantining products. So in the sense that the pills are  
22      already within their possession that they've received from  
23      various customers or entities, they have to keep it right now.  
24      And then they have to get affirmative authority from the FDA to  
25      destroy it.

1           So, you know, plaintiffs are of the belief that our  
2     request to preserve pills is actually, you know, sort of  
3     subsumed by what the FDA is already requiring them to do.

4           THE COURT: Yeah, but that --

5           MS. HILTON: And what they are --

6           THE COURT: Yeah, but I'm not sure that really is a  
7     complete summary of the record, because -- we'll hear from Mr.  
8     Goldberg, but Mr. Goldberg's letter says that they're mandated  
9     in some instances to destroy pills. And that was the basis of  
10    their argument about the primacy and, you know, primary  
11    jurisdiction, et cetera, et cetera.

12           What I'm thinking of, for example, suppose I said to  
13    plaintiffs, plaintiffs file a motion about what you want, and  
14    you're going to say, we want plaintiffs to quarantine and not  
15    destroy every single recalled pill. And I would say to  
16    plaintiffs, what's the volume that we're talking about? Where  
17    are they located? How are they stored?

18           I assume right now you can't give me the answer to  
19    that question.

20           MS. HILTON: No, Your Honor. We can't. And, that's  
21    sort of part of what our ask was, we need something limited --

22           THE COURT: But don't we -- yeah, don't we need to  
23    know that? Don't we need to know that to frame an answer to  
24    this question like what -- isn't what you want is a  
25    representative sample of the recalled product? You can't want



1 ten million pills, you want a representative sample, right?

2 And you can't get a representative sample unless you  
3 know what universe is out there, right? So doesn't it make  
4 sense to try and find out what that universe is?

5 MS. HILTON: Correct, Your Honor. I think that's,  
6 you know, sort of where we landed in our letter. You know, we  
7 asked for some. Of course, our position is that -- that much  
8 of this information as to who is keeping the -- the recalled  
9 product in the event that it is a third-party, you know, the  
10 volume, whether product was already destroyed, when it was  
11 destroyed, who destroyed it, you know, we are in a position  
12 that we were supposed to receive that in core discovery. We  
13 haven't. To some extent we received some documentation  
14 regarding the ongoing recalls and -- and information about who  
15 was keeping the pills, but we don't -- there's a lot of it  
16 that, you know, we don't have.

17 We don't have any certificates of destruction,  
18 destruction has already happened. And so I think, you know,  
19 where we've sort of landed is that we're going to at least  
20 require prior to potentially briefing this this issue, we're  
21 going to require some limited set of discovery to sort of  
22 understand, as Your Honor said, that the scope of the universe  
23 of what a doctor, so we can then, you know, better identify  
24 what it is, you know, we really would like preserved.

25 THE COURT: Mr. Goldberg, help us help you. If -- if

1 the ultimate goal is to, and I'm not ruling, but, I mean,  
2 commonsense tells me that not every last pill has to be  
3 preserved, but a representative sample would have to be  
4 preserved. How can plaintiff go about identifying what a  
5 representative sample is?

6 MR. GOLDBERG: Your Honor, I think you're right about  
7 the point that not every pill can be preserved. Or I think  
8 there's -- you know, there are cross-questions, there are  
9 safety questions about, you know, a recalled drug getting back  
10 into their supply.

11 You know, we -- we as a group talked about the  
12 information that's been requested by plaintiffs. And I think,  
13 you know, by and large we can be comfortable providing that. I  
14 think the -- the issue really is, you know, there are kind of  
15 two issues. Providing that information is one thing, but the  
16 way this has been positioned is that, you know, to the extent  
17 there are pills that have been destroyed pursuant to  
18 communication from the FDA or a recall plan, that that is  
19 somehow only option of evidence.

20 And now, you know, in our view that the manufacturers  
21 who are following the directives of the FDA are not spoliating  
22 evidence. And that's sort of, you know, getting to a sample  
23 and making sure that there are samples available is -- is  
24 potentially something that we could through -- through  
25 production of this information hopefully determine that we can

1 do that.

2 The notion that there has been spoilation has been,  
3 you know, that -- that raises a specter that, you know, we  
4 don't think is warranted at this point. And so that's one of  
5 the reasons we haven't been able to reach an agreement on this  
6 issue.

7 THE COURT: Well isn't the -- doesn't the issue of  
8 whether spoilation occurred in the past put the cart before the  
9 horse? I mean, we'll deal with that issue down the road. But  
10 I think what plaintiff is concerned about is destruction of  
11 product in the future.

12 And if the Court ultimately has to decide that issue,  
13 I don't see how it can decide that issue unless we know the  
14 universe of what we're talking about.

15 MR. GOLDBERG: Yeah, I think that's a -- I think  
16 that's a fair point. I mean, I think, you know, that there is  
17 that question about what we do with drugs that are -- that, you  
18 know, with the drugs that are still in the possession of the  
19 manufacturers that have been, you know -- drugs that have been  
20 returned upstream, so to speak, by the -- by the retailers and  
21 wholesalers, or from consumers, what you do with that at this  
22 point.

23 But -- but the notion, what has happened and has  
24 happened pursuant to FDA directive is we're just concerned that  
25 that that shouldn't be viewed as spoilation since we're doing

1 what the FDA has approved us to do. And I don't know that, you  
2 know, each defendant's going to be in a different place on  
3 this.

4 But I agree with you that, you know, what we do going  
5 forward is something that we can work with the plaintiffs on  
6 and -- and, you know, possibly a good starting point are these  
7 requests for information that they've put in the agenda  
8 submission.

9 THE COURT: So, Ms. Hilton, does it make sense for  
10 you to continue your discussions with defendants to get your  
11 arms around what presently exists? And then, I mean, are you  
12 really going to disagree with the notion that not every pill  
13 has to be preserved, but what you're looking for is a  
14 representative sampling?

15 MS. HILTON: Yes, Your Honor. I think we can work  
16 with defendants on -- on sort of identifying a list of  
17 discovery -- limited discovery on this issue. And, you know,  
18 without -- I don't want to speak out of turn, I think we can  
19 come to some sort of agreement on -- on, you know, potentially  
20 a representative group of pills.

21 And so I think we can work with defendants. I think  
22 the issue is that, you know, right now we just are sort of  
23 operating in a vacuum. I think we don't have a lot of the  
24 documents about what happened after defendants received the  
25 recalled product. We have some documents so I think that, you

1 know, sort of my argument to get more information about what  
2 then happened after they received the recalled product from the  
3 third-party that utilized received the recalled product. And  
4 then, you know, we can come to some sort of hopefully agreeable  
5 conclusion on what we want to be preserved.

6 THE COURT: I don't think this has to be formal  
7 interrogatories or document requests. It seems to me that you  
8 can get this information by informal discussions with, you  
9 know, defense counsel over the phone. And then at the  
10 appropriate time, I'll say file your motion if you can't agree  
11 on what has to be preserved. We'll deal with the spoliation if  
12 there is one down the road.

13 That's not the immediate thing. I think the more  
14 pressing issue is going forward what has to be preserved. So  
15 why don't plaintiff continue their discussions with defendant  
16 so that you have enough information, if there is a dispute and  
17 you have to file a motion asking the Court to order the  
18 defendants to preserve pills, you can talk intelligently about  
19 what precisely is you're asking be preserved, because the Court  
20 wants to know how much, where it is, what's this going to cost,  
21 et cetera, et cetera.

22 MS. HILTON: I think that sounds reasonable, Your  
23 Honor. One thing I'll just (inaudible). Do you think that we  
24 can -- we can perhaps get a lot of this information informally  
25 from conversations with the defendants? One thing I think we

1 actually probably would want, to the extent that the FDA  
2 demanded destruction of pills and the pills have already been  
3 destroyed, those defendants would be required by the FDA to  
4 create something called the certificate of destruction.

5 And so I think if we had some very small direction of  
6 those certificates of destruction to the extent they exist. I  
7 think that's something that would probably wouldn't be able to  
8 necessarily obtain through informal discussions.

9 THE COURT: Is there any objection, Mr. Goldberg, if  
10 the Court orders the defendants to produce FDA certificates of  
11 destruction regarding the recalled product?

12 MR. GOLDBERG: Well I -- I wish I was going to say  
13 that plaintiffs, and I think I had said this before, plaintiffs  
14 in their submission have identified a few areas of information  
15 that they're seeking, and that is one of them. And, you know,  
16 I think I had mentioned that yes, I think generally we're  
17 comfortable --

18 THE COURT: Okay. Great.

19 MR. GOLDBERG: -- with plaintiff to provide this kind  
20 of information. But I'm not sure an order's necessary,  
21 because, you know, we can do this on an informal basis.

22 THE COURT: Okay. Question. Is it only recalled  
23 product that was destroyed, or may be destroyed? Or is it all  
24 Valsartan that was manufactured, say, from a particular time  
25 period, or from a particular facility, even if it wasn't

1 specifically part of a recalled lot or batch?

2 MR. GOLDBERG: Your Honor, I think this is likely  
3 going to differ from defendant-to-defendant. And I think some  
4 of this information is going to be, you know, captured in what  
5 we would provide to plaintiffs. I think for some of the  
6 defendants all of the -- all of the Valsartan has been  
7 recalled. And I -- I don't have an answer from my own  
8 defendant on that specific question, but it's something we can  
9 try to get to the bottom of.

10 THE COURT: So plaintiff wouldn't necessarily want  
11 just -- (background phone voice) -- it sounds to me, correct me  
12 if I'm wrong, Ms. Hilton, but plaintiffs wouldn't necessarily  
13 want just certificates of destruction of recalled product, they  
14 want certificates of destruction of any Valsartan product, say,  
15 after the contamination was identified. Am I wrong about that?

16 MS. HILTON: No, you're not wrong, Your Honor.  
17 That's correct.

18 THE COURT: Okay. So I think that's what Mr.  
19 Goldberg said. So we'll leave it where the parties are going  
20 to talk about this information, because we're going to insist  
21 that when and if the plaintiffs file their motion to preserve  
22 these pills, that they have enough information, like I said, to  
23 specifically identify what it is specifically they want. And  
24 through no fault of anybody right now they don't have that  
25 information. Okay?

1           Next issue -- (background phone voice) -- nobody has  
2   an issue with this short form complaints not properly filed  
3   with MDL centrality. If we knew what -- how we could help,  
4   we'll help. This is in the no-brainer category. Nobody  
5   disagrees that this has to be done. Is there anything the  
6   Court can do to help?

7           UNIDENTIFIED COUNSEL: Your Honor, we discussed this  
8   the other day, myself and Mr. Goldberg, and I think the  
9   fundamental question we have, and if it's not, you know,  
10   through us not focusing on something the Court's told us  
11   previously, then we apologize. We just need to know who it is  
12   involved in this to talk to them and figure out what the issue  
13   is, and then I think that we can, you know, figure out some  
14   sort of an order that would cover the entire issue both for  
15   (inaudible) and people that need extensions to do something.

16           It's a large issue, it's not just one thing. Once we  
17   know, you know, identify who's involved and what -- then we can  
18   talk to them and identify and narrow down the issue. I think --  
19   I think that's the only way we can go. I just know from my  
20   perspective, and I just, again, apologize, I need to know who  
21   we're talking to.

22           MR. GOLDBERG: Your Honor, this is Jeff Goldberg. We  
23   had Exhibit D to our submission. And this issue came up, and  
24   we discussed it on the record back in -- on November 6th. And  
25   Your Honor asked for a list of all of the cases that were



1 improperly filed, and that you would issue an order requiring  
2 those to be re-filed properly or dismissed.

3 And so -- and you asked us to provide a list. We  
4 tried to do that with Exhibit D and think we've got everything.  
5 So --

6 THE COURT: We'll take care of it.

7 MR. GOLDBERG: I think you could use that as a way to  
8 reach out to --

9 THE COURT: Yeah.

10 MR. GOLDBERG: -- your colleagues on the plaintiffs  
11 side.

12 UNIDENTIFIED COUNSEL: Okay.

13 THE COURT: Now --

14 UNIDENTIFIED COUNSEL: That's fine. I didn't realize  
15 that it was attached. I know when we spoke the other day you  
16 were still trying to figure out the list, so -- and neither of  
17 us could remember what happened, so I guess some lawyer figured  
18 it out and attached it. No problem.

19 THE COURT: Okay.

20 UNIDENTIFIED COUNSEL: We'll address it tomorrow.

21 THE COURT: And we'll take care of that order, Mr.  
22 Goldberg. I -- I think you're right. But what does -- I'm  
23 looking at page three of Exhibit D. What is the list of  
24 plaintiffs who failed to file a timely short form complaint?

25 Do we have to do anything with regard to that?

1 UNIDENTIFIED COUNSEL: This is the same thing. I was  
2 just waiting to see who was involved, and then, you know, reach  
3 out to them --

4 THE COURT: Oh, I see.

5 UNIDENTIFIED COUNSEL: -- and try to figure out what  
6 needs to be done.

7 THE COURT: You mean -- oh, they filed a long form  
8 complaint, but not a short form complaint?

9 UNIDENTIFIED COUNSEL: Correct.

10 THE COURT: Okay. Fair enough. We'll take care --

11 MR. NIGH: Your Honor, this is Daniel Nigh. If I  
12 could interject just briefly. We had this kind of issue in  
13 Benicar. They're actually called improvidently filed cases.  
14 Or improvident -- there was a terminology for this. And what  
15 we did was we put them just like the deficiencies of the PFS,  
16 we would list them each month in a Court agenda, and if it was  
17 listed in there twice, then -- then that would open up an order  
18 to show cause. And you start agenda, and it's just the same  
19 process.

20 It sounds like that would be effective for this same  
21 issue as well. That's something we can talk about --

22 THE COURT: Okay.

23 MR. NIGH: -- but that would probably get to the  
24 heart of the issue.

25 THE COURT: Well I'll tell you what, Mr. Nigh, I'll

1 -- I'll issue this order, and if it's ignored then we'll go to  
2 the order to show cause procedure for this --

3 MR. NIGH: Okay.

4 THE COURT: -- issue. Okay?

5 MR. NIGH: Sounds good.

6 THE COURT: Okay. That should take care of that. I  
7 think these people just need to be woken up. Plaintiffs motion  
8 for extension of time. It's just an issue that it's like a bad  
9 toothache, it just won't go away. There's like 25 or 30  
10 motions on the Docket. Probably they don't need to be there.  
11 By inclination, if it can't be worked out was to order the firm  
12 to appear at the end of the month and find out why -- why they  
13 had to file 30 motions when nobody else filed them.

14 So --

15 UNIDENTIFIED COUNSEL: I was going to ask you, Mr.  
16 Goldberg, has he -- the parties have been contacting defense  
17 counsel to ask for a consent, or are we just filing motions?

18 MR. GOLDBERG: I don't think anyone on the defense  
19 side has been contacted by (inaudible).

20 THE COURT: They came in as one -- they came in as  
21 one fell swoop. And after that barrage, we haven't seen any.  
22 So I'm going to order Mr. Golden to be here at the end of the  
23 month. Hopefully, we'll get a letter saying the issue's worked  
24 out, get rid of all the motions, terminate them, so he doesn't  
25 have to come to Camden to explain what's going on.

1 UNIDENTIFIED COUNSEL: Yeah.

2 THE COURT: Number seven. Status of defendant's  
3 ongoing core discovery. Plaintiffs, do you want to talk about  
4 this?

5 MS. HILTON: Sure, Your Honor. Layne Hilton on  
6 behalf of the plaintiff. I think our issue here is, you know,  
7 in essence two-fold. The first issue is that plaintiff has  
8 identified that some defendants have appointed third-parties to  
9 be registered U.S. agents and -- and to communicate with the  
10 FDA on behalf of the company.

11 And we have confirmed that, (a) we're not receiving  
12 communications of course on (inaudible). And, (b) I think we  
13 sort want some clarity as to whether we're going to have to  
14 subpoena those third-party entities, or whether defendants are  
15 going to producing those communications and correspondences  
16 pursuant to the Court's core discovery order.

17 And I think that for the second issue was that in the  
18 context of our further investigation into the pill preservation  
19 issue, we realize that we were likely missing some  
20 correspondence with the FDA regarding the recall as it related  
21 to the destruction of pills, specifically the fact that we  
22 didn't have any certificates of destruction, et cetera, et  
23 cetera.

24 And we are of the belief that those communications  
25 and correspondences were to be provided to us on an ongoing

1 basis pursuant to the Court's order.

2 THE COURT: I guess we ought to clarify. And I  
3 looked at the order, it was certainly the intent of the order  
4 that it wouldn't just apply to the named defendants, but anyone  
5 acting on their behalf. Albeit it didn't say that in so many  
6 words.

7 If the defendants are taking the position that if  
8 they have a third-party agent who's corresponding on their  
9 behalf to the FDA, or separate law firm that's corresponding  
10 with the FDA, if that's not included within the scope of the  
11 Court's order, I'll clarify the order to make it clear that  
12 that's what the Court intended the order to mean.

13 The intent of the order is just -- these are public  
14 documents going to the FDA. The plaintiff is entitled to a  
15 copy of them. We do it in patent cases, and there's no reason  
16 not to do it in this case. So I -- I guess the question  
17 presented to the defendants is, are they taking the position  
18 that, say, for example, defendant X, Y, Z is not sending the  
19 letter, but a third-party agent of X, Y, Z is sending the  
20 letter that that doesn't have to be produced.

21 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I  
22 think -- I think it would be helpful if we could have the  
23 opportunity to talk to the other defendants about this specific  
24 question. You know, I -- I know that at least with respect to  
25 GHP we do have a consultant or two there that have communicated

1 with the FDA, I believe. And as plaintiffs have pointed out,  
2 on one or two occasions Duane Morris has communicated with the  
3 FDA.

4 I don't know that the defendants are taking the  
5 position that that information isn't in their possession and  
6 custody or control, or that they can't -- they are not going to  
7 produce that information. But I think it would be helpful -- I  
8 do not have -- I can't make the representation on behalf of the  
9 other defendants, and I don't know the -- the scope of this  
10 information either. The volume.

11 THE COURT: Okay. Well I would ask plaintiffs to  
12 keep this issue on your radar screen. It's a very, very  
13 important issue in the case. You're entitled to those FDA  
14 communications. They're public documents. They're not  
15 privileged. And they're clearly relevant to the case. So put  
16 it on your radar screen, continue discussions with Mr. Goldberg  
17 and defendants.

18 In terms of the timeliness of the production, I would  
19 like -- the Court would like to be kept up-to-date on this.  
20 You will know by the dates of the letters you receive and  
21 emails you receive whether or not the production to plaintiffs  
22 is timely or not.

23 If an email is dated today and you don't get a copy  
24 of it for six months, that's not in compliance with the Court  
25 order. And I want to know about that, because the order says

1 that the communications with the FDA have to be produced, I  
2 don't have the order in front of me, but I think it was, what,  
3 seven days, within seven days?

4 UNIDENTIFIED COUNSEL: Yes, Your Honor.

5 THE COURT: And if you get -- if you get letters and  
6 emails that are months later, that's unacceptable. So you're  
7 in the best position to know whether the order is being  
8 complied with with regard to the timeliness issue. And  
9 continue your discussions with the defendants about, you know,  
10 this issue about third-party agency consultants. Clearly,  
11 unless the sky falls in, how can a defendant argue that it's a  
12 document within the possession of its law firm, or its  
13 consultant, or agent is not within it's care, custody or  
14 control?

15 You know that -- on the face of it, that argument  
16 makes no sense. So it's an important issue, and I'm asking --  
17 it's an important issue and I'm asking you to stay on top of it  
18 and keep the Court updated, okay?

19 UNIDENTIFIED COUNSEL: We will, Your Honor.

20 THE COURT: If we have to -- if we have to issue  
21 orders requiring productions every two weeks with the  
22 representation there are no responsive documents, we'll do it.  
23 I don't want to do it. That's the last thing in the world I  
24 want to do is create more work. But this order has to be  
25 complied with. Okay?

1           The testing issue. Let me cut to the chase, because  
2       it's getting late. Plaintiffs, I don't know why it's  
3       unacceptable if the defendants give you the Bates numbers where  
4       the tests are listed, why that's not acceptable to you.

5           In an answer to interrogatory, you can give the Bates  
6       number of a document that has the responsive information. It  
7       doesn't sound like plaintiffs are -- defendants are doing a  
8       document dump. They're referring you to the specific documents  
9       that have the information you want.

10          It seems to the Court that that should be enough,  
11       that they don't have to then go to the effort of preparing a  
12       separate list. Is there something I'm missing, plaintiffs?

13          MR. STANOCH: Your Honor, this is David Stanoch.  
14       Briefly on this, Your Honor, the references are to the -- the  
15       high level generic ANDA documents. They have 30 pages here,  
16       for one defendant, 40 pages here for another defendant. And  
17       you ordered them to identify the types and purposes of the  
18       test.

19          So they're simply saying, here's the Bates number,  
20       good luck. That makes it very difficult. And then when we get  
21       to those pages if we think we found what we wanted, it's --  
22       it's only the highest level for the ANDA. For example, if  
23       you're doing a chromatography test, you know, there's over a  
24       dozen types. And there's at least two different machines that  
25       you can them with, and there's two different detectors that you



1 can have on each machine.

2 And that's the detail that's going to move things  
3 along for us and our expert, not looking at the most basic set  
4 of high version of the ANDA file about what might be done  
5 versus what the test they're actually doing and the specifics  
6 of the machines and tests that they were using for it.

7 THE COURT: The defendants have represented that the  
8 Bates numbers that they've given you identify the tests that  
9 they do. Are they not correct?

10 MR. STANOCH: They are generic references to some  
11 types of tests they do, such as absorbent, or condition, or  
12 asset (phonetic). And, you know, they're -- Judge, there are  
13 11 different types of chromatography tests at least. There are  
14 at least two different machines codes that you do  
15 chromatography tests with. There's at least two different  
16 differentiators you use per each machine.

17 That's the kind of detail that we believe we can't  
18 find in there and why just strictly having the list like you  
19 ordered should cut through all this.

20 THE COURT: Okay. Why don't you then look through  
21 the documents that the defendants identified. And if you feel  
22 that there's specifics that are missing, why don't you meet and  
23 confer with the defendant about what you specifically need, and  
24 then they'll respond to it. Rather than requiring them to  
25 prepare a whole separate list, which at least they say is

1 duplicative of what's in the documents. Okay?

2 MR. STANOCH: We'll do that, Your Honor. Thank you.

3 THE COURT: Okay. The last issue in the letter was  
4 the Legacy issue, which we dealt with. But there was one issue  
5 that I wanted to raise. And this is sort of the Court's pet  
6 peeve. And we mentioned it before, these confidentiality  
7 designations. Plaintiff, I've said this before, and you hinted  
8 at it in your letter. If you believe that the designations  
9 that the defendants make are improper, and it's important,  
10 raise it with the Court.

11 Because that's unacceptable, it's just unacceptable  
12 to just willy -- I'm not saying they're doing this, but it's  
13 unacceptable to willy-nilly designate these documents. In your  
14 letter brief, you alluded to that. If you think any of the  
15 documents that you refer to in your letter brief don't deserve  
16 a confidentiality designation, raise it for the next conference  
17 at the end of the month. Send me the documents to review in  
18 camera, and I'll decide.

19 We're not going to have instances in this case where  
20 there's over-designations, simply because that's the way people  
21 usually do things. If a document is confidential genuinely,  
22 it's going to be confidential, it's going to be sealed. But --  
23 but just because a company doesn't want a document to be  
24 circulated in the public, doesn't necessarily make it  
25 confidential or sealable.

1           That's all I have to say about that issue. Okay? So  
2 I leave it in plaintiffs' very capable hands whether they think  
3 it's important enough to raise the issue with the Court. And  
4 if so, just put it on the agenda for the next conference. So  
5 that takes us through the letters. For the good of the order,  
6 are there any other issues that anybody else wants to raise?  
7 I'll try and confirm whatever we've talked about in an order to  
8 be timely entered.

9           Any other issues anybody wants to raise?

10          MR. GOLDBERG: None from defendants, Your Honor.

11          MR. SLATER: Nothing for the plaintiffs, Your Honor.

12 Thank you very much.

13          THE COURT: Okay. Hearing none, we're -- we'll have  
14 the morning and afternoon meetings at the end of the month.  
15 Judge Kugler will be here. So at a minimum, we'll address with  
16 him the -- the two sartan issues, and whatever else comes up.  
17 Thank you, counsel. Have a good day. And we're adjourned.

18          (Proceedings concluded at 5:19 p.m. )

19                   \* \* \* \* \*

1 C E R T I F I C A T I O N

2 I, Josette Jones, court approved transcriber, certify that the  
3 foregoing is a correct transcript from the official digital  
4 audio recording of the proceedings in the above-entitled matter  
5 to the best of my ability.

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